IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DEVON LAMONT GIST,)	
)	
Petitioner,)	
)	
v.)	1:05CV00369
)	
RICKY L. ANDERSON,)	
Superintendent, Foothills)	
Correctional Institution,)	
)	
Respondent.)	

O-R-D-E-R

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on February 13, 2006, was served on the parties in this action. Counsel for Petitioner objected to the Recommendation.

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's recommendation.

IT IS THEREFORE ORDERED that Petitioner's petition for writ of habeas corpus [Pleading No. 2] be **DENIED** as procedurally defaulted and, alternatively, as without merit. A judgment dismissing this action will be entered contemporaneously with this Order. Finding no substantial issue for appeal concerning the denial of a constitutional right

affecting the conviction, nor a debatable procedural ruling, a certificate of appealability is not issued.

United States District Judge

Date: March 23, 2006